



LETTER OF COMMENT NO. 95



August 7, 2008

Technical Director
Financial Accounting Standards Board (FASB)
401 Merritt 7
P. O. Box 5116
Norwalk, Connecticut 06856-5116

Email: director@fasb.org

File Reference: 1600-100

Dear Technical Director:

Koch Industries, Inc. ("KII"), a privately-held company, is pleased to comment on the Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)* (the "Statement"). KII and its subsidiaries (collectively, the "Company") are engaged in operations, trading and investments worldwide and in many industry sectors. The Company has a presence in nearly 60 countries and over 80,000 employees worldwide. KII is the largest privately-held company in the United States according to *Forbes* magazine and its consolidated revenues of approximately \$100 billion would place it among the top Fortune 15 of publicly traded companies in the United States.

As we understand the objectives of the loss contingency disclosures as set forth in the Statement, the Company would be directed to provide significantly more disclosures on loss contingencies, irrespective of recognition, with the intent to assist *users* in making assessments about the Company's financial position, cash flows and results of operations. The proposed changes to the existing disclosure requirements are based on perceived deficiencies in loss contingency disclosures, specifically litigation. As a user of financial statements in the capacity of extending credit limits to customers, we rely on *financial disclosures to help us assess a customer's ability to meet its obligations*. Several of the Company's businesses issue stand-alone audited financial statements to banks and rating agencies, which are two user groups of their financial statements. Thus, our comments are based on the perspective of both a user and preparer of financial statements.

While we recognize the value of the objectives the FASB seeks to realize with the proposed Statement, we do have serious concerns about the intended and unintended consequences the Statement would have on the business community. We wish to address two particular areas of concern – (1) the greater discrepancy created by the proposed Statement as compared to the current disclosure requirements of International Accounting Standard No. 37 ("IAS 37") and the resultant competitive disadvantage such a discrepancy creates and (2) the significant negative impact the proposed disclosure requirements could lead to from a civil litigation perspective. As we discuss the first area of concern, we wish to propose an alternative plan of action for the FASB to consider in order to better achieve its stated objectives. In addition, we have responded (in Appendix B to this Comment Letter) to each of the 14 Issues addressed in the Notice for Recipients.

The Proposed Statement Creates a Greater Divergence from the Disclosure Requirements of IAS 37, which in turn Creates a Competitive Disadvantage.

A comparison of the disclosure requirements of IAS 37 and those of this Statement demonstrated to us that even more divergence would be created with this Statement, as the two statements would have very different disclosure requirements. We believe a high degree of uncertainty exists with respect to how and when convergence would occur. Considering the overall perspectives of the SEC, U.S. Department of Treasury, investors, and other users, we believe the market is looking for more immediate convergence on accounting standards and changes to financial reporting that create investor confidence (equity and debt security holders being the primary investors). Therefore, we propose an alternative approach that we think supports convergence and can achieve the objective of the FASB to enhance meaningful disclosures about loss contingencies, thereby also addressing the perceived deficiency in disclosures by certain users. We believe the current approach, as proposed, would place U.S. companies at a competitive disadvantage with foreign companies for the reasons provided herein.

An Alternative Approach That Seeks to Converge FASB Disclosure Requirements and IASB Disclosure Requirements Will More Effectively Achieve FASB's Stated Objectives.

First, we recommend the FASB take a phased approach to changing the disclosure framework surrounding loss contingencies that would still meet the current objective of improving disclosures to financial statement users. The following summarizes our recommendation on a phased approach:

1. **Retain the Tabular Reconciliation of Recognized Loss Contingencies.**
 - a. The proposal in the Statement is consistent with IAS 37's disclosure requirement of the tabular reconciliation as modified for measurement differences. We do support the tabular reconciliation being presented in the aggregate for loss contingencies, although we believe that amounts recognized through business combinations should not be separately disclosed from the aggregate reconciliation. The tabular reconciliation could be useful in illustrating how a company's reserve practices and risk management principles relate to the company's experience on actual cash outflows for loss contingencies.
2. **Provide more illustration or interpretive guidance on good qualitative disclosures as required by the existing disclosure principles under FAS 5 and SOP 94-6.** For example:
 - a. Accounting policy disclosures regarding the significance of management judgment involved with contingent liabilities as outcome of litigation is difficult to predict.
 - b. Added qualitative disclosure or management's assertion of the company's experience with actual payments related to litigation and impact to financial condition or results of operations as supported by the tabular reconciliation.
 - c. Disclosure on the company's risk management philosophy on litigation (i.e., aggressively defending vs. settlement) and adequacy of estimates in anticipating actual outcomes.
 - (i) Under SOP 94-6, if a Company uses *risk-reduction* techniques to mitigate losses or the uncertainty that may result from future events and, as a result, determines that a loss is not subject to change in the near term or would not be material, further disclosure is not required. Thus, we believe understanding a company's risk management philosophy would be more useful to users.

See Appendix A for further illustrative examples.

3. **Align disclosure requirements with those of IAS 37.** For example:
 - a. On recorded loss contingencies, disclose the nature of the obligation, expected timing of resolution, uncertainties about the amount or timing of settlement, and significant assumptions concerning future events impacting the ultimate outcome. These provisions are similar to the disclosure requirements in the Statement. Disclosures on such loss contingencies would only be *made for those that are or could be significant to the company's financial condition, cash flows, or results of operations.*
 - b. On unrecorded loss contingencies, where the possibility of outflow in settlement is not remote and *where practicable*, disclose the estimate of financial effect and an indication of the uncertainties relating to the amount or timing of any outflow, and the possibility of any reimbursement.
 - (i) The practicability provision is an important consideration to balance the undue cost and burden that would be created with the disclosure requirements as currently proposed in the Statement. The subjective nature of determining whether a loss is remote will result in a substantial increase in audit cost to companies (as a private company with limited investor-type users, this cost substantially outweighs the perceived benefits), as well as a significantly greater likelihood of inaccurate information being disclosed.
4. **Delay any prescriptive requirement to disclose quantitative amounts on recorded or unrecorded losses, especially on claim amounts as assessed against the company.**
 - a. This provision requires more field testing to fully comprehend the second and third order effects or unintended consequences that could arise resulting in a higher cost to society than intended.
 - b. The increase in audit cost for a private company will substantially outweigh the perceived benefits. If the perceived benefits of these disclosure requirements are predominately from users needing to evaluate future cash flows in order to value a company's stock, we believe such benefits would not be recognized by users of private company financials.¹ The internal and external compliance costs would be significant to comply with these requirements considering the high degree of subjectivity required to be exercised by the preparers, outside advisors and auditors.

Second, we recommend that FASB extend the time allotted for field testing. A robust field testing period would provide for the following:

1. An adequate evaluation of the second and third order effects (i.e., the unintended consequences – take stock of the learnings from FIN 46R, FIN 48, etc.). A rush to market on standards that dramatically change the landscape of accounting or reporting have proven to be more costly to society than the originally intended benefits.
2. Adequate time for the American Institute of Certified Public Accountants and American Bar Association to discuss how best to audit such disclosures and determine changes required to existing audit procedures.
3. Better assessment of the needs of investors versus other user groups (such as equity, credit and risk analysts) – this would achieve well-thought out disclosure guidance balanced with costs versus addressing *perceived* inadequacies in disclosures.
4. Provide time for preparers to evaluate internal processes and controls to more adequately respond to the impact of a pervasive change in existing disclosure requirements.

¹ The burdens facing a privately held company under this proposed Statement are further addressed in the comment letter provided by the Standards Subcommittee of the Committee on Private Companies of Financial Executives International.

For these reasons, we also recommend the Statement be effective for annual financial statements issued for fiscal years ending after December 15, 2009, and interim and annual periods in subsequent fiscal years. The proposed effective date is impractical considering the substantial impact on auditors and preparers. Further, the proposed changes were made when FASB met in March but were not issued until June, and the likelihood of the Statement being issued in a timeframe that adequately provides for incorporating the changes requires an extension of the effective date.

The Proposed Statement Would Create Significant Negative Consequences in a Civil Litigation Context.

The proposed disclosure requirements of the Exposure Draft would cause all financial statement preparers, public and private, to experience significant negative consequences in a civil litigation context. These negative consequences include:

1. The proposed Statement would lead to less accurate information for investors.

- a. By changing the thresholds for accrual (Paragraph 8) from “probable” and “reasonably estimated,” and for disclosure (Paragraph 10) from “reasonabl[y] possib[le]” and estimable, to a new disclosure standard (proposed Paragraphs 5 and 6) that requires disclosure for all asserted claims that are not remote as well as certain claims that are remote, companies will be forced to state claims and estimate exposures before they have sufficient information to give an accurate assessment of actual liabilities.
 - (i) Insofar as companies are required to value claims at the onset, they will invariably be inaccurate – most pieces of complex litigation cannot be accurately valued until after discovery has been largely completed (which can be as short as months or as long as years).
 - (ii) The Board itself acknowledges in Appendix A to the Exposure Draft that the premature estimates required by the proposed Statement could be “highly uncertain”. (Exposure Draft, Appendix A, Paragraph A16). The Board further acknowledged in the current FAS 5 that “[t]he requirement that [a] loss be reasonably estimable is intended to prevent accrual in the financial statements of amounts so uncertain as to **impair the integrity of those statements.**” FAS 5, Appendix C, Paragraph 59 (emphasis added). We respectfully disagree with the premise asserted by certain financial statement users that “a highly uncertain estimate supplemented with a qualitative description” is preferable to “no quantification of a potential loss” – we believe “highly uncertain estimate[s]” will not “significantly improve the overall quality of disclosures[.]” (Exposure Draft, p. vi).
 - (iii) While estimating maximum loss exposure for a significant piece of litigation before discovery has been conducted is difficult enough, providing an estimate of maximum loss exposure before a claim has even been asserted and the litigation process has begun (proposed Paragraph 7.a.(2)) is an inherently inaccurate process.
 - (iv) Providing preparers of financial statements the option of disclosing the best estimate of the possible loss or range of loss if they believe the amount of the claim is not representative of their actual exposure (proposed Paragraph 7.a.) is an option that carries unintended risks. If an entity takes this option as to a single piece of litigation, its failure to do so as to another piece of litigation could suggest (either accurately or inaccurately) that it does not believe that its estimated possible loss or range of loss is less than the claimed amount or maximum exposure to loss. Therefore, what is intended as an option to create more accuracy in financial reporting carries unintended risks that would dissuade entities from taking the option.

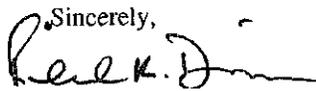
- b. Reliance by investors on these numbers, which are inherently “highly uncertain,” will most likely become the source of additional litigation. The cost of this additional litigation would be significant to preparers of financial statements, and appears not to have been considered in the Benefits and Costs section of Appendix A of the Exposure Draft. (Exposure Draft, Appendix A, Paragraphs A34-A37).

2. The proposed Statement will require entities to disclose information that their adversaries can use to a preparing entity’s detriment in an underlying dispute.

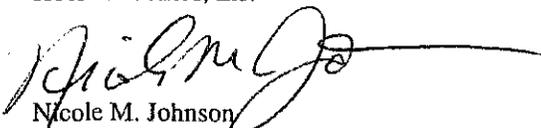
- a. The proposed Statement contemplates both quantitative and qualitative disclosures at the earliest stages of a dispute, thereby providing insight to an adversary of a party’s point of view.
- b. Among the quantitative disclosures required by the proposed Statement is an entity’s “best estimate of the maximum exposure to loss” in certain situations where there has been no claim or assessment amount. (Proposed Paragraph 7.a.(2)). We fail to see how the requirement of such a written estimate before any claim has been asserted would not lead to the formal making of such a claim for at least the maximum exposure to loss contained in the financial statement. Therefore, unasserted claims that are only “probable” and carry more than a remote likelihood of loss (proposed Paragraph 5.b.) are more likely to be asserted because of the disclosure requirements of proposed Paragraph 7.a.(2) – clearly a required disclosure that would be to a preparing entity’s detriment.
- c. Another quantitative disclosure contemplated by the proposed Statement is an entity’s “best estimate of the possible loss or range of loss[.]” (Proposed Paragraph 7.a.). If such a number were ever disclosed by a preparing entity in a financial statement and subsequently made known to an adversary, that number would effectively serve as a floor for any subsequent mediation or settlement discussion between the parties. Since a preparing entity would be under an obligation to give a “best estimate” of a range of loss, any settlement negotiation would be fatally compromised because a corporate defendant would have to start the negotiation where it intended the negotiation to end. This is an untenable position for a corporate defendant to be in, and it effectively makes the option of disclosure in proposed Paragraph 7.a. unworkable.
- d. Among the qualitative disclosures required by the proposed Statement are a description of the contingency, its legal or contractual basis, the anticipated timing of its resolution, a description of the factors that are likely to affect the ultimate outcome of the contingency along with their potential effect on the outcome, the entity’s qualitative assessment of the most likely outcome of the contingency, and significant assumptions made by the entity in estimating its quantitative disclosure. (Proposed Paragraph 7.b.). These qualitative disclosures necessarily disclose a company’s thinking and strategies in handling a claim, and would constitute information that would be helpful to an adversary in, among other things, drafting discovery, taking depositions, and participating in mediation or settlement negotiations – all to the likely detriment of the preparing entity.
- e. Even where the proposed Statement recognizes that disclosure of certain information about the contingency will be prejudicial to an entity’s position, it requires certain qualitative disclosures such as the factors that are likely to affect the ultimate outcome of the contingency along with the potential impact on the outcome. (Proposed Paragraph 11).
- f. The disclosure information will likely be the subject of intense discovery in the underlying litigation. The resultant litigation costs, both in terms of the actual costs of preparing and responding to discovery on these issues, as well as the extreme adverse implications (discussed above) to the likelihood of a negotiated resolution of an underlying dispute, will be extremely high. It does not appear these costs were contemplated in the Benefits and Costs section of Appendix A of the Exposure Draft. (Exposure Draft, Appendix A, Paragraphs A34-A37).

3. **The prejudicial exemption in proposed Paragraph 11, while conceptually well-intentioned, does not adequately protect a preparing entity from the detrimental impact it was intended to address.**
- a. In most instances, the first step of the proposed two step process will not be satisfactory because the quantitative disclosure could be reverse engineered.
 - b. Even where an entity takes advantage of the second step, it still has qualitative disclosures that create unacceptable risk, as described above.
 - c. The "rare" circumstances language will necessarily be a source of contention because the instances where aggregation will be insufficient to protect against "prejudice" will be more common than contemplated by the proposed Statement.
4. **The proposed Statement threatens the attorney-client privilege and the attorney work product doctrine.**
- a. The contemplated disclosures necessarily require input from in-house and/or outside counsel.
 - b. Those disclosures may constitute public disclosure, and therefore a waiver of the attorney-client privilege and/or work product protection.
 - c. Apart from the disclosures themselves, independent audits, which would likely include underlying communications with counsel, may constitute a waiver of the attorney-client privilege and/or work product protection.

We appreciate the opportunity to comment on this proposed Statement. We would be pleased to discuss these comments and expand upon our views at a public roundtable meeting. If you have any questions regarding our comments or wish to directly discuss any other matters discussed herein, please contact Richard Dinkel at 316-828-6486, Nicole Johnson at 316-828-7932 or Wes Edwards at 316-828-7627.

Sincerely,


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Koch Industries, Inc.



Nicole M. Johnson
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Koch Industries, Inc.



Weston A. Edwards
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Koch Industries, Inc.

Appendix A:

Example Financial Statement Disclosures – Under Existing Requirements and Proposed Additions

Disclosure Type	Under Existing Requirements	Proposed Additions to Requirements
Accounting Policy	<p>The Company is the subject of, or party to, a number of pending or threatened legal actions, contingencies and commitments involving a variety of matters, including laws and regulations relating to the environment. Certain of these matters are discussed further in Note X. The ultimate resolution of these contingencies could, individually or in the aggregate, be material to the Company's consolidated financial statements. However, management believes that Company will remain a viable and competitive enterprise even though it is possible that these contingencies could be resolved unfavorably....</p> <p>*****</p> <p>Certain conditions may exist as of the date the financial statements are issued, which may result in a loss to the Company but which will only be resolved when one or more future events occur or fail to occur. The Company's management and its legal counsel assess such contingent liabilities, and such assessment inherently involves an exercise of judgment. In assessing loss contingencies related to legal proceedings that are pending against the Company or unasserted claims that may result in such proceedings, the Company's legal counsel evaluates the perceived merits of any legal proceedings or unasserted claims as well as the perceived merits of the amount of relief sought or expected to be sought therein.</p> <p>If the assessment of a contingency indicates that it is probable that a material loss has been incurred and the amount of the liability can be estimated, then the estimated liability would be accrued in the Company's financial statements. If the assessment indicates that a potentially material loss contingency is not probable, but is reasonably possible, or is probable but cannot be estimated, then the nature of the contingent liability, together with an estimate of the range of possible loss if determinable and material, would be disclosed.</p>	<p>.....Contingencies exist where the timing or amount of future expenditure is uncertain.</p> <p>.....Amounts are recorded at the balance sheet date at the best estimate of the expenditure required to settle the contingency.</p> <p>.....Because actual outflows can differ from estimates and can take place many years in the future, the carrying amounts of provisions are regularly reviewed and adjusted to take account of such changes.</p> <p>.....Contingencies are recognized in the period when it becomes probable that there will be a future outflow of funds resulting from past operations or events which can be reasonably estimated.</p> <p>.....The timing of recognition requires the application of judgment to existing facts and circumstances, which can be subject to change.</p> <p>.....Accordingly, significant management judgment relating to contingent liabilities is required since the outcome of litigation is difficult to predict. Despite this uncertainty, actual payments related to litigation during the three years ended December 31, 20XX, have not been material to the Company's financial condition or results of operations.</p> <p>.....Notwithstanding the possibility of outcomes outside expected ranges, in recent years the Company's experience has been that estimates used in determining the appropriate levels of provisions have been materially adequate in anticipating actual outcomes.</p>
Ordinary course of business	<p>The Company is subject to various claims and legal proceedings covering a wide range of matters that arise in the ordinary course of its business activities, including product liability claims. Management believes that any liability that may ultimately result from the resolution of these matters will not have a material adverse effect on the financial condition or results of operations of the Company.</p>	<p>No change proposed to existing requirement.</p> <p>(Proposed Alternative) The Company is subject to a number of other loss contingencies arising out of litigation and claims brought by governmental and private parties, which are handled in the ordinary course of business. The operations and earnings of the Company continue, from time to time, to be affected to varying degrees by political, legislative, fiscal, and regulatory developments, including those relating to the protection of the</p>

Disclosure Type	Under Existing Requirements	Proposed Additions to Requirements
		environment and indigenous groups, in the countries in which they operate. The industries in which the Company is engaged are also subject to physical risks of various types. The nature and frequency of these developments and events, not all of which are covered by insurance, as well as their effect on future operations and earnings, are unpredictable.
<i>Loss contingency accrued – not significant to financials</i>	The Company is a defendant along with many other refining companies in over 50 cases in 12 states alleging methyl tertiary-butyl ether ("MTBE") contamination in groundwater. All of these cases have been consolidated in a multi-district litigation in the Southern District of New York for preliminary proceedings. The Company stopped producing MTBE at its refineries in October 20XX. The potential impact of these recent cases and future potential similar cases is uncertain. The Company is engaged in ongoing settlement discussions related to the majority of the cases in which it is a defendant, and established a related reserve in 20XX, the amount of which is not significant to the Company's consolidated results of operations, financial position or cash flows.	No proposed changes.
<i>Loss contingency accrued – terms subject to confidentiality</i>	In January 20XX, Stuart Construction Co. (Stuart) filed suit against the Company alleging that the Company had failed to provide coated, welded pipe fittings and joints in accordance with contract specifications for a construction project in the Pacific Grove area. In November 20XX, the parties involved agreed to settle the suit. The financial terms of the settlement are subject to a confidentiality agreement; however, the settlement will not have a material effect on the Company's financial condition or results of operations.	No proposed changes.
<i>Loss contingency accrued – reasonably possible</i>	The Company assesses reasonably possible environmental liability relating to environmental remediation and ongoing compliance at several sites. Such liability is not probable but is more likely than remote. As of December 31, 20XX, while the Company has not been designated as a potentially responsible party at any site, the amount of environmental liability identified that is reasonably possible is in the range of \$2,000,000 to \$5,500,000. The Company does not expect to incur liabilities at the higher end of the range, based on the limited information currently available.	No proposed changes.

Example Tabular Disclosure:

	(in millions)
At January 1, 20XX	1,500
Additional provisions	600
Payments	(700)
Amounts charged against provisions	(200)
Currency translation differences	90
At December 31, 20XX	1,290
Additional provisions	1,100
Payments	(680)
Amounts charged against provisions	(200)
Currency translation differences	130
At December 31, 20XX	1,640

The timing of payments related to these provisions is uncertain and is dependent on various items which are not always within management's control.

Appendix B

We provide the following responses to the issues presented in the proposed FSP:

ISSUE 1.a. - *Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not?*

Response: No. Overall, we believe that the stated objectives of the proposed Statement do not achieve improved disclosures as the likelihood of inaccurate disclosure counters any perceived benefits. The current approach as proposed in the Statement would place U.S. companies at a competitive disadvantage with foreign companies. Further, the market is looking for more immediate convergence on accounting standards and changes to financial reporting that create investor confidence (equity and debt security holders being the primary investors). Therefore, we proposed an alternative approach that supports convergence and one we think can achieve the objective of the FASB to enhance disclosures about loss contingencies thereby also addressing the perceived deficiency in disclosures by certain users.

The lowered threshold for disclosure contemplated in the proposed Statement will lead to "highly uncertain estimates" which will create more confusion and misunderstanding among the investing public, will create potential liability for preparers of financial statements, will adversely impact corporate defendants in underlying litigation (thus affecting the outcome of the loss contingency itself), and will risk waiver of the attorney-client privilege and the attorney work product doctrine.

ISSUE 1.b. - *What costs do you expect to incur if the Board were to issue the proposed Statement in its current form as a final Statement?*

Response: By changing the disclosure threshold from probable and estimable to include even certain remote claims, companies will be forced to estimate exposures before they have sufficient information to give an accurate assessment. The subjective nature of determining whether a loss is remote will result in a substantial increase in audit cost to companies (as a private company with limited investor-type users, this cost substantially outweighs the perceived benefits).

In addition, the disclosure requirements in the proposed Statement will likely lead to additional discovery regarding the disclosures, increased litigation challenging the accuracy of the disclosures, increased litigation for unasserted claims where a preparing entity was forced to provide a quantitative estimate, and increased litigation costs due to the fact that settlement negotiations will be compromised by the required disclosures.

ISSUE 1.c. - *How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?*

Response: We have proposed an alternative approach which we believe provides for a reduction in costs without a significant reduction in benefits.

ISSUE 3 - *Should an entity be required to provide disclosure about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact on the operations of the entity? Why or why not?*

Response: No. We do not support any required disclosure of a remote claim, and believe a quantitative or qualitative disclosure of a remote claim as contemplated by the proposed Statement is inherently inaccurate. We believe the current disclosure requirements of SOP 94-6 are adequate in that a company's risk management techniques should be considered in evaluating such disclosure requirements.

ISSUE 4.a. - *The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure. Do you believe that this change will result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?*

Response: First, we believe this requirement could place U.S. companies at a competitive disadvantage to foreign companies which are not required to disclose such information. Further, this option has several undesirable litigation consequences. Unless an entity makes such an estimate in every instance, it would be sending an unintended message (accurately or inaccurately) that when it does not make such an estimate its estimated possible loss or range of loss is not less than the claimed amount or maximum exposure to loss. In addition, disclosure of such a best estimate where a claim has been unasserted will likely encourage the formal filing of such a claim, and disclosure of such a best estimate where a claim has been asserted will serve as an effective floor for any subsequent settlement discussions, fatally compromising mediation or other settlement negotiations.

ISSUE 4.b. - *Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment is not representative of the entity's actual exposure? Why or why not?*

Response: See response to Issue 4.a.

ISSUE 4.c. - *If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill the users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?*

Response: The only quantitative disclosure that should be required is the tabular reconciliation. We believe this requirement will meet the users' needs for quantitative information. Additional evaluation of the benefits of this disclosure can be assessed by users before broadening to more quantitative disclosures that could have unintended consequences to the markets.

ISSUE 5 - *If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?*

Response: See response to Issue 4.a.

ISSUE 6 - *Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?*

Response: No. We agree with the Board that a settlement offer fails to provide an accurate reflection of the likely underlying exposure only a short time after the offer is made and, therefore, should not be a required disclosure. Further, we note that this rationale – that a settlement offer is neither accurate nor a helpful piece of information for the investing public – applies equally to the premature disclosures (including estimates of maximum exposure to loss and estimates of possible loss or range of loss) contemplated in the proposed Statement. This is particularly true with respect to claims that are either remote or are currently not reasonably estimable.

ISSUE 7 - *Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in amounts recognized in the financial statements? Why or why not?*

Response: Yes, we believe that the tabular reconciliation could be useful in illustrating how a company's reserve practices and risk management principles relate to the company's experience on actual payments.

ISSUE 8 - *This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree such an exemption should be provided? Why or why not?*

Response: Yes, we agree that there should be an exemption from disclosing prejudicial information. However, we also believe the prejudicial exemption provided for in Paragraph 11 of the proposed Statement is insufficient. In most instances, the first step of the proposed two step process will not be satisfactory because the quantitative disclosure could be reverse engineered. Even where an entity takes advantage of the second step, it still has qualitative disclosures which create unacceptable risk, as described above. The "rare" circumstances language will necessarily be a source of contention because the instances where aggregation will be insufficient to protect against "prejudice" will be more common than contemplated by the proposed Statement.

ISSUE 9 - *If you agree with providing a prejudicial exemption, do you agree with the two step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?*

Response: See response to Issue 8.

ISSUE 10 - *The existing disclosure requirements of IAS 37 includes a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?*

Response: We agree with the Board's position that "rare" is preferable to "extremely rare." However, as described in response to Issue 8, above, we do not believe the prejudicial exemption as provided for in Paragraph 11, including the "rare" circumstances language, sufficiently addresses the underlying prejudices intended to be avoided by the exemption.

ISSUE 11 - *Do you agree with the description of prejudicial information as information whose "disclosure ... could affect, the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define prejudicial information and why?*

Response: We agree with the scope of the description.

ISSUE 12 - *Do you believe it operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should tabular reconciliation be required only annually? Why or why not?*

Response: The current disclosure requirements under existing accounting standards are considered sufficient. The tabular reconciliation is most likely already performed by a company as part of its internal review processes on recorded loss contingencies. However, the timing of when the information is gathered, assembled, and reviewed by management may occur subsequent to interim financials being published.

ISSUE 13 - *Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed statement? If so, what other information would you require?*

Response: We believe expanded disclosures should occur in the area of accounting policy and a company's risk management approach to loss contingencies as we describe above and illustrate in Appendix A.

ISSUE 14 - *Do you believe it is operational for entities to implement the proposed Statement in fiscal years after December 15, 2008? Why or why not?*

Response: No. The proposed effective date is impractical considering the pervasive impacts on auditors and preparers. Further, the proposed changes were made when FASB met in March but were not issued until June and the likelihood of the Statement being issued in a timeframe that adequately provides for incorporating the changes requires an extension of the effective date.